

**AMENDMENT TO H.R. 1817, AS REPORTED
OFFERED BY MR. MARKEY OF MASSACHUSETTS**

Add at the end the following:

1 **SEC. ____.** **WHISTLEBLOWER PROTECTIONS.**

2 (a) IN GENERAL.—No covered individual may be dis-
3 charged, demoted, suspended, threatened, harassed, rep-
4 rimanded, investigated, or in any other manner discrimi-
5 nated against (including by a denial, suspension, or rev-
6 ocation of a security clearance or by any other security
7 access determination) if such discrimination is due, in
8 whole or in part, to any lawful act done, perceived to have
9 been done, or intended to be done by the covered
10 individual—

11 (1) to provide information, cause information to
12 be provided, or otherwise assist in an investigation
13 regarding any conduct which the covered individual
14 reasonably believes constitutes a violation of any
15 law, rule, or regulation relating to national or home-
16 land security, which the covered individual reason-
17 ably believes constitutes a threat to national or
18 homeland security, or which the covered individual
19 reasonably believes constitutes fraud, waste, or mis-
20 management of Government funds intended to be



1 used for national or homeland security, when the in-
2 formation or assistance is provided to or the inves-
3 tigation is conducted by—

4 (A) a Federal, State, or local regulatory or
5 law enforcement agency (including an office of
6 Inspector General under the Inspector General
7 Act of 1978);

8 (B) any Member of Congress, any com-
9 mittee of Congress, or the Government Ac-
10 countability Office; or

11 (C) a person with supervisory authority
12 over the covered individual (or such other per-
13 son who has the authority to investigate, dis-
14 cover, or terminate misconduct);

15 (2) to file, cause to be filed, testify, participate
16 in, or otherwise assist in a proceeding or action filed
17 or about to be filed relating to an alleged violation
18 of any law, rule, or regulation relating to national or
19 homeland security; or

20 (3) to refuse to violate or assist in the violation
21 of any law, rule, or regulation relating to national or
22 homeland security.

23 (b) ENFORCEMENT ACTION.—

24 (1) IN GENERAL.—A covered individual who al-
25 leges discharge or other discrimination by any per-



1 son in violation of subsection (a) may seek relief
2 under subsection (c) by—

3 (A) filing a complaint with the Secretary of
4 Labor; or

5 (B) if the Secretary has not issued a final
6 decision within 180 days after the filing of the
7 complaint and there is no showing that such
8 delay is due to the bad faith of the claimant,
9 bringing an action at law or equity for de novo
10 review in the appropriate district court of the
11 United States, which shall have jurisdiction
12 over such an action without regard to the
13 amount in controversy.

14 (2) PROCEDURE.—

15 (A) IN GENERAL.—An action under para-
16 graph (1)(A) shall be governed under the rules
17 and procedures set forth in section 42121(b) of
18 title 49, United States Code.

19 (B) EXCEPTION.—Notification made under
20 section 42121(b)(1) of title 49, United States
21 Code, shall be made to the person named in the
22 complaint and to the person's employer.

23 (C) BURDENS OF PROOF.—An action
24 brought under paragraph (1)(B) shall be gov-
25 erned by the legal burdens of proof set forth in



1 section 42121(b) of title 49, United States
2 Code.

3 (D) STATUTE OF LIMITATIONS.—An action
4 under paragraph (1) shall be commenced not
5 later than 1 year after the date on which the
6 violation occurs.

7 (c) REMEDIES.—

8 (1) IN GENERAL.—A covered individual pre-
9 vailing in any action under subsection (b)(1) shall be
10 entitled to all relief necessary to make the covered
11 individual whole.

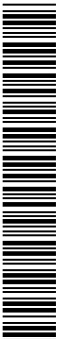
12 (2) DAMAGES.—Relief for any action under
13 paragraph (1) shall include—

14 (A) reinstatement with the same seniority
15 status that the covered individual would have
16 had, but for the discrimination;

17 (B) the amount of any back pay, with in-
18 terest;

19 (C) compensation for any special damages
20 sustained as a result of the discrimination, in-
21 cluding litigation costs, expert witness fees, and
22 reasonable attorney fees; and

23 (D) punitive damages in an amount not to
24 exceed the greater of 3 times the amount of any



1 monetary damages awarded under this section
2 (apart from this subparagraph) or \$5,000,000.

3 (d) STATE SECRETS PRIVILEGE.—If, in any action
4 brought under subsection (b)(1)(B), the Government as-
5 serts as a defense the privilege commonly referred to as
6 the “state secrets privilege” and the assertion of such
7 privilege prevents the plaintiff from establishing a prima
8 facie case in support of the plaintiff’s claim, the court shall
9 enter judgment for the plaintiff and shall determine the
10 relief to be granted.

11 (e) CRIMINAL PENALTIES.—

12 (1) IN GENERAL.—It shall be unlawful for any
13 person employing a covered individual to commit an
14 act prohibited by subsection (a). Any person vio-
15 lating this paragraph shall be fined under title 18 of
16 the United States Code, imprisoned not more than
17 10 years, or both.

18 (2) REPORTING REQUIREMENT.—The Depart-
19 ment of Justice shall (based on such periodic reports
20 and other information from the Department of
21 Labor as the Department of Justice may require)
22 submit to Congress an annual report on the enforce-
23 ment of paragraph (1). Each such report shall (A)
24 identify each case in which formal charges under
25 paragraph (1) were brought, (B) describe the status



1 or disposition of each such case, and (C) in any ac-
2 tions under subsection (b)(1)(B) in which the cov-
3 ered individual was the prevailing party or the sub-
4 stantially prevailing party, indicate whether or not
5 any formal charges under paragraph (1) have been
6 brought and, if not, the reasons therefor.

7 (f) RIGHTS RETAINED BY COVERED INDIVIDUAL.—
8 Nothing in this section shall be deemed to diminish the
9 rights, privileges, or remedies of any covered individual
10 under any Federal or State law, or under any collective
11 bargaining agreement. The rights and remedies in this
12 section may not be waived by any agreement, policy, form,
13 or condition of employment.

14 (g) DEFINITIONS.—For purposes of this section—

15 (1) the term “covered individual” means an em-
16 ployee of—

17 (A) an office, agency, or other instrumen-
18 tality of the Government (which, for purposes
19 of this section, includes the Department of
20 Homeland Security, the Transportation Secu-
21 rity Administration, and any other instrumen-
22 tality of the Government having personnel flexi-
23 bilities conferred by law, as identified by the
24 Office of Personnel Management in regula-
25 tions);



1 (B) a Federal contractor or subcontractor;
2 and

3 (C) an employer within the meaning of sec-
4 tion 701(b) of the Civil Rights Act of 1964 (42
5 U.S.C. 2000e(b));

6 (2) the term “lawful” means not specifically
7 prohibited by law, except that, in the case of any in-
8 formation the disclosure of which is specifically pro-
9 hibited by law or specifically required by Executive
10 order to be kept secret in the interest of national de-
11 fense or the conduct of foreign affairs, any disclo-
12 sure of such information to any Member of Con-
13 gress, committee of Congress, or other recipient au-
14 thorized to receive such information, shall be deemed
15 lawful;

16 (3) the term “Federal contractor” means a per-
17 son who has entered into a contract with an instru-
18 mentality of the Government;

19 (4) the term “employee” means—

20 (A) with respect to an employer referred to
21 in paragraph (1)(A), an employee as defined by
22 section 2105 of title 5, United States Code; and

23 (B) with respect to an employer referred to
24 in subparagraph (B) or (C) of paragraph (1),
25 any officer, partner, employee, or agent;



1 such term, as defined by subparagraph (A), includes
2 an individual holding a position in an instrumen-
3 tality of the Government identified in the parenthet-
4 ical matter under paragraph (1)(A);

5 (5) the term “subcontractor”—

6 (A) means any person, other than the Fed-
7 eral contractor, who offers to furnish or fur-
8 nishes any supplies, materials, equipment, or
9 services of any kind under a contract with an
10 instrumentality of the Government or a sub-
11 contract entered into in connection with such a
12 contract; and

13 (B) includes any person who offers to fur-
14 nish or furnishes general supplies to the Fed-
15 eral contractor or a higher tier subcontractor;
16 and

17 (6) the term “person” means a corporation,
18 partnership, State entity, business association of any
19 kind, trust, joint-stock company, or individual.

20 (h) AUTHORIZATION OF FUNDS.—Of the amounts
21 authorized under section 101, there is authorized to be
22 appropriated amounts necessary for carrying out this sec-
23 tion. Except as provided in the preceding sentence, this
24 section shall have no force or effect.

